

No. 1068

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*In the Supreme Court of the United States*

OCTOBER TERM, 1942

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THE UNITED STATES OF AMERICA, APPELLANT

v.s.

JACOB HARK AND HYMAN YAFFEE, CO-PARTNERS  
DOING BUSINESS AS LIBERTY BEEF COMPANY

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APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF MASSACHUSETTS

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STATEMENT AS TO JURISDICTION

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## **STATEMENT AS TO JURISDICTION**

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the United States of America submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the order of the District Court entered in this cause on March 31, 1943. The petition for appeal was filed on April 30, 1943, and is presented to the District Court herewith on the 30th day of April 1943.

## **JURISDICTION**

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this

cause is conferred by the Act of March 2, 1907, as amended by the Act of May 9, 1942 (34 Stat. 1246; 56 Stat. 401; 18 U. S. C. 682), commonly known as the Criminal Appeals Act, and by 28 U. S. C. 345.

#### STATUTES INVOLVED

A printed copy of the Emergency Price Control Act of 1942, 56 Stat. 23; 50 U. S. C. App. 901, is attached hereto.

Section 13 of the Revised Statutes (1 U. S. C. 29) provides as follows:

The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

#### THE ISSUES AND THE RULING BELOW

The indictment in this case was returned on December 21, 1942. In twenty-four counts it charges Jacob Hark and Hyman Yaffee, copartners doing business as Liberty Beef Company, with selling wholesale cuts of beef at prices higher than those determined under Maximum Price Regulation No. 169, as amended, issued pursuant to the Emergency Price Control Act of 1942.

The indictment alleges that on June 19, 1942, the Price Administrator issued Maximum Price Regu-

lation No. 169 which became effective on July 20, 1942.<sup>1</sup> Section 1364.51 of the Regulations provided that no person should sell or deliver any beef or veal carcass or wholesale cut at a price higher than the maximum price permitted by Section 1364.52 of the Regulation. At all times referred to in the indictment this Regulation, as amended, was in effect under the provisions of Section 2 of the Emergency Price Control Act of 1942, and the maximum prices for the sale of beef and veal carcasses and wholesale cuts were determined under Section 1364.52 of the Regulation, as amended.

Each count of the indictment alleges that on a particular date the defendants made a specified sale of wholesale cuts of beef at prices higher than those determined under Section 1364.52 of the Regulation, as amended. All of the dates on which the sales are alleged to have been made fall between September 29, 1942, and November 13, 1942.

Each of the defendants filed a pleading entitled "motion to quash" alleging as grounds, among others, that the Emergency Price Control Act of

<sup>1</sup> 7 Fed. Reg. 4653.

<sup>2</sup> The motions to quash raised a number of other questions which were not discussed or ruled upon by the court below and are unnecessary to the discussion here. In addition, the defendant Hark filed four other pleadings, two entitled "Plea in Abatement," one "Demurrer," and one "Motion to Quash"; and the defendant Yaffee filed one other pleading entitled "Plea in Abatement." The additional questions raised in these various pleadings were likewise not discussed or ruled upon by the District Court and are not pertinent here.

1942 is unconstitutional, and that "the indictment sets forth no crime against the United States as of the date of the indictment" for the reason that Sections 1364.51 and 1364.52 of the Regulation, as amended, had been revoked by an order of the Price Administrator which became effective December 16, 1942, prior to the return of the indictment.<sup>3</sup>

The District Court, although it concluded that the Act was within the war power of Congress and did not improperly delegate legislative authority to the Price Administrator, held that the "defendants cannot be held to answer to this indictment" because of the revocation of the pertinent provisions of the Regulation prior to the return of the indictment, although after the date of the violations. In reaching this decision the Court held: (1) the general rule that repeal of a statute without reservation of the right to prosecute for past violations operates to prevent further proceedings in pending prosecutions applies to revoked administrative regulations; (2) the general saving provision of Section 13 of the Revised Statutes (1 U. S. C. 29) does not apply for the reason that it is limited to the repeal of statutes and has no application in the case of revoca-

<sup>3</sup> The facts are that on December 10, 1942, the Price Administrator issued a Revised Maximum Price Regulation No. 169 to become effective December 16, 1942. This revision states that Sections 1364.51 through 1364.67 "are revoked" and establishes new maximum prices. 7 Fed. Reg. 10381.

tion of administrative regulations. Accordingly, the District Court ordered that the indictment be "quashed on the ground that the regulation alleged to have been violated was revoked prior to the return of the indictment."

**THE SUPREME COURT HAS JURISDICTION UNDER THE  
CRIMINAL APPEALS ACT**

We think it is clear that the Supreme Court has jurisdiction to review the decision of the District Court under the provision of the Criminal Appeals Act (18 U. S. C. 682) giving the United States the right to appeal directly to the Supreme Court in criminal cases from a "decision or judgment sustaining a special plea in bar, when the defendant has not been put in jeopardy."

Whether the decision of the District Court was one sustaining a plea in bar within the meaning of this provision is to be determined not by form but by substance. *United States v. Thompson*, 251 U. S. 407, 412; *United States v. Goldman*, 277 U. S. 229, 236 (Statute of Limitations). It is immaterial that the motion was entitled "motion to quash" or that the ruling of the court was that the indictment be "quashed" if the judgment in substance sustained a plea in bar. *United States v. Goldman*, *supra*; *United States v. Thompson*, *supra*; *United States v. Oppenheimer*, 242 U. S. 85, 86; *United States v. Barber*, 219 U. S. 72, 78.

Here the judgment was not based on the insufficiency of the indictment nor on irregularities

in the grand jury proceedings. Rather it sustained a defense, in the form of confession and avoidance, directed to the merits of the charges in the indictment. In substance, therefore, it was a judgment sustaining a special plea in bar.

In *United States v. Chambers*, 291 U. S. 217, the Supreme Court entertained an appeal taken by the Government under the Criminal Appeals Act in substantially similar circumstances. There the District Court had dismissed the indictment on the ground that the repeal of the Eighteenth Amendment prevented further proceedings under an indictment charging a conspiracy to violate the National Prohibition Act, the defense having been raised by a plea in abatement and a demurrer.

#### THE QUESTIONS ARE SUBSTANTIAL

We think the District Court erred in holding that the general rule regarding the effect of repeal of a statute on pending prosecutions applies in the case of revoked administrative regulations. The rationale of that rule is that continued prosecution depends upon the continued life of the statute which the prosecution seeks to apply. *United States v. Chambers*, *supra*, p. 223; *United States v. Tynen*, 11 Wall. 88, 95. Different considerations apply, however, in the case of revoked administrative regulations. In such a case, although the administrative regulation fills in the details, it is the statute, not the regulation, which



establishes the crime and fixes the penalty. Revocation or change of the regulation does not and could not affect the statutory provisions.

The question has been authoritatively decided, we believe, by the Supreme Court in *United States v. Curtiss-Wright Corp.*, 299 U. S. 304, sustaining a prosecution for violation of a Presidential embargo, where the Proclamation declaring the embargo had been revoked at the time of the indictment but the Joint Resolution authorizing it and fixing criminal penalties had not been repealed.

A similar result had previously been reached by at least one Circuit Court of Appeals, on the ground that the general saving provision in Section 13 of the Revised Statutes should be construed to save such prosecutions. *Landen v. United States*, 299 Fed. 75, 78 (C. C. A. 6); cf. *DeFour v. United States*, 260 Fed. 596 (C. C. A. 9), certiorari denied, 253 U. S. 487; *Goublin v. United States*, 261 Fed. 5 (C. C. A. 9).

The questions presented by this case are of large importance in the administration of both the Emergency Price Control Act of 1942 and Title III of the Second War Powers Act (50 U. S. C. App. 633), as well as numerous other important federal statutes which contemplate changes from time to time in administrative regulations to meet changing conditions.



—For the foregoing reasons it is respectfully submitted that this case presents issues of substance which call for review by the Supreme Court.

(Signed) CHARLES FAHY,

*Solicitor General.*

APRIL 1943.

[PUBLIC LAW 421—77TH CONGRESS]

[CHAPTER 26—2D SESSION]

[H. R. 5990]

AN ACT

To further the national defense and security by checking speculative and excessive price rises, price dislocations, and inflationary tendencies, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**TITLE I—GENERAL PROVISIONS AND AUTHORITY**

**PURPOSES; TIME LIMIT; APPLICABILITY**

SECTION 1. (a) It is hereby declared to be in the interest of the national defense and security and necessary to the effective prosecution of the present war, and the purposes of this Act are, to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency; to assure that defense appropriations are not dissipated by excessive prices; to protect persons with relatively fixed and limited incomes, consumers, wage earners, investors, and persons dependent on life insurance, annuities, and pensions, from undue impairment of their standard of living; to prevent hardships to persons engaged in business, to schools, universities, and other institutions, and to the Federal, State, and local governments, which would result from abnormal increases in prices; to assist in securing adequate production of commodities and facilities; to prevent a post emergency collapse of values; to stabilize agricultural prices in the manner provided in section 3; and to permit voluntary cooperation between the Government and producers, processors, and others to accomplish the aforesaid purposes. It shall be the policy of those departments and agencies of the Government dealing with wages (including the Department of Labor and its various bureaus, the War Department, the Navy Department, the War Production Board, the National Labor Relations Board, the National Mediation Board, the National War Labor Board, and others heretofore or hereafter created), within the limits of their authority and jurisdiction, to work toward a stabilization of prices, fair and equitable wages, and cost of production.

(b) The provisions of this Act, and all regulations, orders, price schedules, and requirements thereunder, shall terminate on June 30, 1943, or upon the date of a proclamation by the President, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessary in the interest of the national defense and security, whichever date is the earlier; except that as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act and such regulations,

orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense.

(c) The provisions of this Act shall be applicable to the United States, its Territories and possessions, and the District of Columbia.

#### PRICES, RENTS, AND MARKET AND BIDDING PRACTICES

SEC. 2. (a) Whenever in the judgment of the Price Administrator (provided for in section 201) the price or prices of a commodity or commodities have risen or threaten to rise to an extent or in a manner inconsistent with the purposes of this Act, he may by regulation or order establish such maximum price or maximum prices as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act. So far as practicable, in establishing any maximum price, the Administrator shall ascertain and give due consideration to the prices prevailing between October 1 and October 15, 1941 (or if, in the case of any commodity, there are no prevailing prices between such dates, or the prevailing prices between such dates are not generally representative because of abnormal or seasonal market conditions or other cause, then to the prices prevailing during the nearest two-week period in which, in the judgment of the Administrator, the prices for such commodity are generally representative), for the commodity or commodities included under such regulation or order, and shall make adjustments for such relevant factors as he may determine and deem to be of general applicability, including the following: Speculative fluctuations, general increases or decreases in costs of production, distribution, and transportation, and general increases or decreases in profits earned by sellers of the commodity or commodities, during and subsequent to the year ended October 1, 1941. Every regulation or order issued under the foregoing provisions of this subsection shall be accompanied by a statement of the considerations involved in the issuance of such regulation or order. As used in the foregoing provisions of this subsection, the term "regulation or order" means a regulation or order of general applicability and effect. Before issuing any regulation or order under the foregoing provisions of this subsection, the Administrator shall, so far as practicable, advise and consult with representative members of the industry which will be affected by such regulation or order. In the case of any commodity for which a maximum price has been established, the Administrator shall, at the request of any substantial portion of the industry subject to such maximum price, regulation, or order of the Administrator, appoint an industry advisory committee, or committees, either national or regional or both, consisting of such number of representatives of the industry as may be necessary in order to constitute a committee truly representative of the industry, or of the industry in such region, as the case may be. The committee shall select a chairman from among its members, and shall meet at the call of the chairman. The Administrator shall from time to time, at the request of the committee, advise and consult with the committee with respect to the regulation or order, and with respect to the form thereof, and classifications, differentiations, and adjustments therein. The committee may make such recommendations to

the Administrator as it deems advisable. Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, without regard to the foregoing provisions of this subsection, issue temporary regulations or orders establishing as a maximum price or maximum prices the price or prices prevailing with respect to any commodity or commodities within five days prior to the date of issuance of such temporary regulations or orders; but any such temporary regulation or order shall be effective for not more than sixty days, and may be replaced by a regulation or order issued under the foregoing provisions of this subsection:

(b) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he shall issue a declaration setting forth the necessity for, and recommendations with reference to, the stabilization or reduction of rents for any defense-area housing accommodations within a particular defense-rental area. If within sixty days after the issuance of any such recommendations rents for any such accommodations within such defense-rental area have not in the judgment of the Administrator been stabilized or reduced by State or local regulation, or otherwise, in accordance with the recommendations, the Administrator may by regulation or order establish such maximum rent or maximum rents for such accommodations as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act. So far as practicable, in establishing any maximum rent for any defense-area housing accommodations, the Administrator shall ascertain and give due consideration to the rents prevailing for such accommodations, or comparable accommodations, on or about April 1, 1941 (or if, prior or subsequent to April 1, 1941, defense activities shall have resulted or threatened to result in increases in rents for housing accommodations in such area inconsistent with the purposes of this Act, then on or about a date (not earlier than April 1, 1940), which in the judgment of the Administrator, does not reflect such increases), and he shall make adjustments for such relevant factors as he may determine and deem to be of general applicability in respect of such accommodations, including increases or decreases in property taxes and other costs. In designating defense-rental areas, in prescribing regulations and orders establishing maximum rents for such accommodations, and in selecting persons to administer such regulations and orders, the Administrator shall, to such extent as he determines to be practicable, consider any recommendations which may be made by State and local officials concerned with housing or rental conditions in any defense-rental area.

(c) Any regulation or order under this section may be established in such form and manner, may contain such classifications and differentiations, and may provide for such adjustments and reasonable exceptions, as in the judgment of the Administrator are necessary or proper in order to effectuate the purposes of this Act. Any regulation or order under this section which establishes a maximum price or maximum rent may provide for a maximum price or maximum rent below the price or prices prevailing for the commodity or commodities, or below the rent or rents prevailing for the defense-area housing accommodations, at the time of the issuance of such regulation or order.

(d) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices (including practices relating to changes in form or quality) or hoarding, in connection with any commodity, and speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense area housing accommodations, which in his judgment are equivalent to or are likely to result in price or rent increases, as the case may be, inconsistent with the purposes of this Act.

(e) Whenever the Administrator determines that the maximum necessary production of any commodity is not being obtained or may not be obtained during the ensuing year, he may, on behalf of the United States, without regard to the provisions of law requiring competitive bidding, buy or sell at public or private sale, or store or use, such commodity in such quantities and in such manner and upon such terms and conditions as he determines to be necessary to obtain the maximum necessary production thereof or otherwise to supply the demand therefor, or make subsidy payments to domestic producers of such commodity in such amounts and in such manner and upon such terms and conditions as he determines to be necessary to obtain the maximum necessary production thereof: *Provided*, That in the case of any commodity which has heretofore or may hereafter be defined as a strategic or critical material by the President pursuant to section 5d of the Reconstruction Finance Corporation Act, as amended, such determinations shall be made by the Federal Loan Administrator, with the approval of the President, and, notwithstanding any other provision of this Act or of any existing law, such commodity may be bought or sold, or stored or used, and such subsidy payments to domestic producers thereof may be paid, only by corporations created or organized pursuant to such section 5d; except that in the case of the sale of any commodity by any such corporation, the sale price therefor shall not exceed any maximum price established pursuant to subsection (c) of this section which is applicable to such commodity at the time of sale or delivery, but such sale price may be below such maximum price or below the purchase price of such commodity, and the Administrator may make recommendations with respect to the buying or selling, or storage or use, of any such commodity. In any case in which a commodity is domestically produced, the powers granted to the Administrator by this subsection shall be exercised with respect to importations of such commodity only to the extent that, in the judgment of the Administrator, the domestic production of the commodity is not sufficient to satisfy the demand therefor. Nothing in this section shall be construed to modify, suspend, amend, or supersede any provision of the Tariff Act of 1930, as amended, and nothing in this section, or in any existing law, shall be construed to authorize any sale or other disposition of any agricultural commodity contrary to the provisions of the Agricultural Adjustment Act of 1938, as amended, or to authorize the Administrator to prohibit trading in any agricultural commodity for future delivery if such trading is subject to the provisions of the Commodity Exchange Act, as amended.

(f) No power conferred by this section shall be construed to authorize any action contrary to the provisions and purposes of section 3, and no agricultural commodity shall be sold within the United States pursuant to the provisions of this section by any governmental agency at a price below the price limitations imposed by section 3 (a) of this Act with respect to such commodity.

(g) Regulations, orders, and requirements under this Act may contain such provisions as the Administrator deems necessary to prevent the circumvention or evasion thereof.

(h) The powers granted in this section shall not be used or made to operate to compel changes in the business practices, cost practices or methods, or means or aids to distribution, established in any industry, except to prevent circumvention or evasion of any regulation, order, price schedule, or requirement under this Act.

(i) No maximum price shall be established for any fishery commodity below the average price of such commodity in the year 1941.

#### AGRICULTURAL COMMODITIES

SEC. 3. (a) No maximum price shall be established or maintained for any agricultural commodity below the highest of any of the following prices, as determined and published by the Secretary of Agriculture: (1) 110 per centum of the parity price for such commodity, adjusted by the Secretary of Agriculture for grade, location, and seasonal differentials, or, in case a comparable price has been determined for such commodity under subsection (b), 110 per centum of such comparable price, adjusted in the same manner, in lieu of 110 per centum of the parity price so adjusted; (2) the market price prevailing for such commodity on October 1, 1941; (3) the market price prevailing for such commodity on December 15, 1941; or (4) the average price for such commodity during the period July 1, 1919, to June 30, 1929.

(b) For the purposes of this Act, parity prices shall be determined and published by the Secretary of Agriculture as authorized by law. In the case of any agricultural commodity other than the basic crops corn, wheat, cotton, rice, tobacco, and peanuts, the Secretary shall determine and publish a comparable price whenever he finds, after investigation and public hearing, that the production and consumption of such commodity has so changed in extent or character since the base period as to result in a price out of line with parity prices for basic commodities.

(c) No maximum price shall be established or maintained for any commodity processed or manufactured in whole or substantial part from any agricultural commodity below a price which will reflect to producers of such agricultural commodity a price for such agricultural commodity equal to the highest price therefor specified in subsection (a).

(d) Nothing contained in this Act shall be construed to modify, repeal, supersede, or affect the provisions of the Agricultural Marketing Agreement Act of 1937, as amended, or to invalidate any marketing agreement, license, or order, or any provision thereof or amendment thereto, heretofore or hereafter made or issued under the provisions of such Act.



(e) Notwithstanding any other provision of this or any other law, no action shall be taken under this Act by the Administrator or any other person with respect to any agricultural commodity without the prior approval of the Secretary of Agriculture; except that the Administrator may take such action as may be necessary under section 202 and section 205 (a) and (b) to enforce compliance with any regulation, order, price schedule or other requirement with respect to an agricultural commodity which has been previously approved by the Secretary of Agriculture.

(f) No provision of this Act or of any existing law shall be construed to authorize any action contrary to the provisions and purposes of this section.

#### PROHIBITIONS

Sec. 4. (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations; or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

(b) It shall be unlawful for any person to remove or attempt to remove from any defense area housing accommodations the tenant or occupant thereof or to refuse to renew the lease or agreement for the use of such accommodations, because such tenant, or occupant has taken, or proposes to take, action authorized or required by this Act or any regulation, order, or requirement thereunder.

(c) It shall be unlawful for any officer or employee of the Government, or for any adviser or consultant to the Administrator in his official capacity, to disclose, otherwise than in the course of official duty, any information obtained under this Act, or to use any such information, for personal benefit.

(d) Nothing in this Act shall be construed to require any person to sell any commodity or to offer any accommodations for rent.

#### VOLUNTARY AGREEMENTS

Sec. 5. In carrying out the provisions of this Act, the Administrator is authorized to confer with producers, processors, manufacturers, retailers, wholesalers, and other groups having to do with commodities, and with representatives and associations thereof, to cooperate with any agency or person, and to enter into voluntary arrangements or agreements with any such persons, groups, or associations relating to the fixing of maximum prices, the issuance of other regulations or orders, or the other purposes of this Act, but no such arrangement or agreement shall modify any regulation, order, or price schedule previously issued which is effective in accordance with the provisions of section 2 or section 206. The Attorney General shall be promptly furnished with a copy of each such arrangement or agreement.



## TITLE II—ADMINISTRATION AND ENFORCEMENT

## ADMINISTRATION

SEC. 201. (a) There is hereby created an Office of Price Administration, which shall be under the direction of a Price Administrator (referred to in this Act as the "Administrator"). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of \$12,000 per annum. The Administrator may, subject to the civil-service laws, appoint such employees as he deems necessary in order to carry out his functions and duties under this Act, and shall fix their compensation in accordance with the Classification Act of 1923, as amended. The Administrator may utilize the services of Federal, State, and local agencies and may utilize and establish such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may appear for and represent the Administrator in any case in any court. In the appointment, selection, classification, and promotion of officers and employees of the Office of Price Administration, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

(b) The principal office of the Administrator shall be in the District of Columbia, but he or any duly authorized representative may exercise any or all of his powers in any place. The President is authorized to transfer any of the powers and functions conferred by this Act upon the Office of Price Administration with respect to a particular commodity or commodities to any other department or agency of the Government having other functions relating to such commodity or commodities, and to transfer to the Office of Price Administration any of the powers and functions relating to priorities or rationing conferred by law upon any other department or agency of the Government with respect to any particular commodity or commodities; but, notwithstanding any provision of this or any other law, no powers or functions conferred by law upon the Secretary of Agriculture shall be transferred to the Office of Price Administration or to the Administrator, and no powers or functions conferred by law upon any other department or agency of the Government with respect to any agricultural commodity, except powers and functions relating to priorities or rationing, shall be so transferred.

(c) The Administrator shall have authority to make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere; for lawbooks and books of reference; and for paper, printing, and binding) as he may deem necessary for the administration and enforcement of this Act. The provisions of section 3709 of the Revised Statutes shall not apply to the purchase of supplies and services by the Administrator where the aggregate amount involved does not exceed \$250.

(d) The Administrator may, from time to time, issue such regulations and orders as he may deem necessary or proper in order to carry out the purposes and provisions of this Act.

## INVESTIGATIONS; RECORDS; REPORTS

SEC. 202. (a) The Administrator is authorized to make such studies and investigations and to obtain such information as he deems necessary or proper to assist him in prescribing any regulation or order under this Act, or in the administration and enforcement of this Act and regulations, orders, and price schedules thereunder.

(b) The Administrator is further authorized, by regulation or order, to require any person who is engaged in the business of dealing with any commodity, or who rents or offers for rent or acts as broker or agent for the rental of any housing accommodations, to furnish any such information under oath or affirmation or otherwise, to make and keep records and other documents, and to make reports, and he may require any such person to permit the inspection and copying of records and other documents, the inspection of inventories, and the inspection of defense-area housing accommodations. The Administrator may administer oaths and affirmations and may, whenever necessary, by subpoena require any such person to appear and testify or to appear and produce documents, or both, at any designated place.

(c) For the purpose of obtaining any information under subsection (a), the Administrator may by subpoena require any other person to appear and testify or to appear and produce documents, or both, at any designated place.

(d) The production of a person's documents at any place other than his place of business shall not be required under this section in any case in which, prior to the return date specified in the subpoena issued with respect thereto, such person either has furnished the Administrator with a copy of such documents (certified by such person under oath to be a true and correct copy), or has entered into a stipulation with the Administrator as to the information contained in such documents.

(e) In case of contumacy by, or refusal to obey a subpoena served upon, any person referred to in subsection (c), the district court for any district in which such person is found or resides or transacts business, upon application by the Administrator, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The provisions of this subsection shall also apply to any person referred to in subsection (b), and shall be in addition to the provisions of section 4 (a).

(f) Witnesses subpoenaed under this section shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(g) No person shall be excused from complying with any requirements under this section because of his privilege against self incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1933 (U. S. C., 1934 edition, title 49, sec. 46), shall apply with respect to any individual who specifically claims such privilege.

(h) The Administrator shall not publish or disclose any information obtained under this Act that such Administrator deems confi-

dential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless he determines that the withholding thereof is contrary to the interest of the national defense and security.

#### PROCEDURE

Sec. 203. (a) Within a period of sixty days after the issuance of any regulation or order under section 2, or in the case of a price schedule, within a period of sixty days after the effective date thereof specified in section 206, any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections. At any time after the expiration of such sixty days any persons subject to any provision of such regulation, order, or price schedule may file such a protest based solely on grounds arising after the expiration of such sixty days. Statements in support of any such regulation, order, or price schedule may be received and incorporated in the transcript of the proceedings at such times and in accordance with such regulations as may be prescribed by the Administrator. Within a reasonable time after the filing of any protest under this subsection, but in no event more than thirty days after such filing or ninety days after the issuance of the regulation or order (or in the case of a price schedule, ninety days after the effective date thereof specified in section 206) in respect of which the protest is filed, whichever occurs later, the Administrator shall either grant or deny such protest in whole or in part, notice such protest for hearing, or provide an opportunity to present further evidence in connection therewith. In the event that the Administrator denies any such protest in whole or in part, he shall inform the protestant of the grounds upon which such decision is based; and of any economic data and other facts of which the Administrator has taken official notice.

(b) In the administration of this Act the Administrator may take official notice of economic data and other facts, including facts found by him as a result of action taken under section 202.

(c) Any proceedings under this section may be limited by the Administrator to the filing of affidavits, or other written evidence, and the filing of briefs.

#### REVIEW

Sec. 204. (a) Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals, created pursuant to subsection (c), specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part. A copy of such complaint shall forthwith be served on the Administrator, who shall certify and file with such court a transcript of such portions of the proceedings in connection with the protest as are material under the complaint. Such transcript shall include a statement setting forth, so far as practicable, the economic data and other facts of which the Administrator has taken official notice. Upon the filing of such complaint the court shall have

exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint, or to remand the proceeding: *Provided*, That the regulation, order, or price schedule may be modified or rescinded by the Administrator at any time notwithstanding the pendency of such complaint. No objection to such regulation, order, or price schedule, and no evidence in support of any objection thereto, shall be considered by the court, unless such objection shall have been set forth by the complainant in the protest or such evidence shall be contained in the transcript. If application is made to the court by either party for leave to introduce additional evidence which was either offered to the Administrator and not admitted, or which could not reasonably have been offered to the Administrator or included by the Administrator in such proceedings, and the court determines that such evidence should be admitted, the court shall order the evidence to be presented to the Administrator. The Administrator shall promptly receive the same, and such other evidence as he deems necessary or proper, and thereupon he shall certify and file with the court a transcript thereof and any modification made in the regulation, order, or price schedule as a result thereof; except that on request by the Administrator, any such evidence shall be presented directly to the court.

(b) No such regulation, order, or price schedule shall be enjoined or set aside, in whole or in part, unless the complainant establishes to the satisfaction of the court that the regulation, order, or price schedule is not in accordance with law, or is arbitrary or capricious. The effectiveness of a judgment of the court enjoining or setting aside, in whole or in part, any such regulation, order, or price schedule shall be postponed until the expiration of thirty days from the entry thereof, except that if a petition for a writ of certiorari is filed with the Supreme Court under subsection (d) within such thirty days, the effectiveness of such judgment shall be postponed until an order of the Supreme Court denying such petition becomes final, or until other final disposition of the case by the Supreme Court.

(c) There is hereby created a court of the United States to be known as the Emergency Court of Appeals, which shall consist of three or more judges to be designated by the Chief Justice of the United States from judges of the United States district courts and circuit courts of appeals. The Chief Justice of the United States shall designate one of such judges as chief judge of the Emergency Court of Appeals, and may, from time to time, designate additional judges for such court and revoke previous designations. The chief judge may, from time to time, divide the court into divisions of three or more members, and any such division may render judgment as the judgment of the court. The court shall have the powers of a district court with respect to the jurisdiction conferred on it by this Act; except that the court shall not have power to issue any temporary restraining order or interlocutory decree staying or restraining, in whole or in part, the effectiveness of any regulation or order issued under section 2 or any price schedule effective in accordance with the provisions of section 206. The court shall exercise its powers and prescribe rules governing its procedure in such manner as to expedite the determination of cases of which it has jurisdiction under this Act. The court may fix and establish a table of costs and

fees to be approved by the Supreme Court of the United States, but the costs and fees so fixed shall not exceed with respect to any item the costs and fees charged in the Supreme Court of the United States. The court shall have a seal, hold sessions at such places as it may specify, and appoint a clerk and such other employees as it deems necessary or proper.

(d) Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as provided in section 240 of the Judicial Code, as amended. (U. S. C., 1934 edition, title 28, sec. 347). The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision.

#### ENFORCEMENT

SEC. 205. (a) Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

(b) Any person who willfully violates any provision of section 4 of this Act, and any person who makes any statement or entry false in any material respect in any document or report required to be kept or filed under section 2 or section 202, shall, upon conviction thereof, be subject to a fine of not more than \$5,000, or to imprisonment for not more than two years in the case of a violation of section 4 (c), and for not more than one year in all other cases, or to both such fine and imprisonment. Whenever the Administrator has reason to believe that any person is liable to punishment under this subsection, he may certify the facts to the Attorney General, who may, in his discretion, cause appropriate proceedings to be brought.

(c) The district courts shall have jurisdiction of criminal proceedings for violations of section 4 of this Act, and, concurrently with



State and Territorial courts; of all other proceedings under section 205 of this Act. Such criminal proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred. Except as provided in section 205 (f) (2), such other proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred, and may also be brought in the district in which the defendant resides or transacts business, and process in such cases may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found. Any such court shall advance on the docket and expedite the disposition of any criminal or other proceedings brought before it under this section. No costs shall be assessed against the Administrator or the United States Government in any proceeding under this Act.

(d) No person shall be held liable for damages or penalties in any Federal, State, or Territorial court, on any grounds for or in respect of anything done or omitted to be done in good faith pursuant to any provision of this Act or any regulation, order, price schedule, requirement, or agreement thereunder, or under any price schedule of the Administrator of the Office of Price Administration or of the Administrator of the Office of Price Administration and Civilian Supply, notwithstanding that subsequently such provision, regulation, order, price schedule, requirement, or agreement may be modified, rescinded, or determined to be invalid. In any suit or action wherein a party relies for ground of relief or defense upon this Act or any regulation, order, price schedule, requirement, or agreement thereunder, the court having jurisdiction of such suit or action shall certify such fact to the Administrator. The Administrator may intervene in any such suit or action.

(e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may bring an action either for \$5.00 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court. For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer is not entitled to bring suit or action under this subsection, the Administrator may bring such action under this subsection on behalf of the United States. Any suit or action under this subsection may be brought in any court of competent jurisdiction, and shall be instituted within one year after delivery is completed or rent is paid. The provisions of this subsection shall not take effect until after the expiration of six months from the date of enactment of this Act.

(f) (1) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act and to assure compliance with and provide for the effective enforcement of any regulation or order issued or which may be issued under section 2, or of any price schedule effective in accordance with

the provisions of section 206, he may by regulation or order issue to or require of any person or persons subject to any regulation or order issued under section 2, or subject to any such price schedule, a license as a condition of selling any commodity or commodities with respect to which such regulation, order, or price schedule is applicable. It shall not be necessary for the Administrator to issue a separate license for each commodity or for each regulation, order, or price schedule with respect to which a license is required. No such license shall contain any provision which could not be prescribed by regulation, order, or requirement under section 2 or section 202: *Provided*, That no such license may be required as a condition of selling or distributing (except as waste or scrap) newspapers, periodicals, books, or other printed or written material, or motion pictures, or as a condition of selling radio time: *Provided further*, That no license may be required of any farmer as a condition of selling any agricultural commodity produced by him, and no license may be required of any fisherman as a condition of selling any fishery commodity caught or taken by him: *Provided further*, That in any case in which such a license is required of any person, the Administrator shall not have power to deny to such person a license to sell any commodity or commodities, unless such person already has such a license to sell such commodity or commodities, or unless there is in effect under paragraph (2) of this subsection with respect to such person an order of suspension of a previous license to the extent that such previous license authorized such person to sell such commodity or commodities.

(2) Whenever in the judgment of the Administrator a person has violated any of the provisions of a license issued under this subsection, or has violated any of the provisions of any regulation, order, or requirement under section 2 or section 202 (b), or any of the provisions of any price schedule effective in accordance with the provisions of section 206, which is applicable to such person, a warning notice shall be sent by registered mail to such person. If the Administrator has reason to believe that such person has again violated any of the provisions of such license, regulation, order, price schedule, or requirement after receipt of such warning notice, the Administrator may petition any State or Territorial court of competent jurisdiction, or a district court subject to the limitations hereinafter provided, for an order suspending the license of such person for any period of not more than twelve months. If any such court finds that such person has violated any of the provisions of such license, regulation, order, price schedule, or requirement after the receipt of the warning notice, such court shall issue an order suspending the license to the extent that it authorizes such person to sell the commodity or commodities in connection with which the violation occurred, or to the extent that it authorizes such person to sell any commodity or commodities with respect to which a regulation or order issued under section 2, or a price schedule effective in accordance with the provisions of section 206, is applicable; but no such suspension shall be for a period of more than twelve months. For the purposes of this subsection, any such proceedings for the suspension of a license may be brought in a district court if the licensee is doing business in more than one State, or if his gross sales exceed \$100,000 per annum. Within thirty days after the entry of the judgment or order of any



court either suspending a license, or dismissing or denying in whole or in part the Administrator's petition for suspension, an appeal may be taken from such judgment or order in like manner as an appeal may be taken in other cases from a judgment or order of a State, Territorial, or district court, as the case may be. Upon good cause shown, any such order of suspension may be stayed by the appropriate court or any judge thereof in accordance with the applicable practice; and upon written stipulation of the parties to the proceeding for suspension, approved by the trial court, any such order of suspension may be modified; and the license which has been suspended may be restored, upon such terms and conditions as such court shall find reasonable. Any such order of suspension shall be affirmed by the appropriate appellate court if, under the applicable rules of law, the evidence in the record supports a finding that there has been a violation of any provision of such license, regulation, order, price schedule, or requirement after receipt of such warning notice. No proceedings for suspension of a license, and no such suspension, shall confer any immunity from any other provision of this Act.

#### SAVING PROVISIONS

SEC. 206. Any price schedule establishing a maximum price or maximum prices, issued by the Administrator of the Office of Price Administration or the Administrator of the Office of Price Administration and Civilian Supply, prior to the date upon which the Administrator provided for by section 201 of this Act takes office, shall, from such date, have the same effect as if issued under section 2 of this Act until such price schedule is superseded by action taken pursuant to such section 2. Such price schedules shall be consistent with the standards contained in section 2 and the limitations contained in section 3 of this Act, and shall be subject to protest and review as provided in section 203 and section 204 of this Act. All such price schedules shall be reprinted in the Federal Register within ten days after the date upon which such Administrator takes office.

### TITLE III—MISCELLANEOUS

#### QUARTERLY REPORT

SEC. 301. The Administrator from time to time, but not less frequently than once every ninety days, shall transmit to the Congress a report of operations under this Act. If the Senate or the House of Representatives is not in session, such reports shall be transmitted to the Secretary of the Senate, or the Clerk of the House of Representatives, as the case may be.

#### DEFINITIONS

SEC. 302. As used in this Act—

(a) The term "sale" includes sales, dispositions, exchanges, leases, and other transfers, and contracts and offers to do any of the foregoing. The terms "sell", "selling", "seller", "buy", and "buyer", shall be construed accordingly.

(b) The term "price" means the consideration demanded or received in connection with the sale of a commodity.

(c) The term "commodity" means commodities, articles, products, and materials (except materials furnished for publication by any press association or feature service, books, magazines, motion pictures, periodicals and newspapers, other than as waste or scrap), and it also includes services rendered otherwise than as an employee in connection with the processing, distribution, storage, installation, repair, or negotiation of purchases or sales of a commodity, or in connection with the operation of any service establishment for the servicing of a commodity: *Provided*, That nothing in this Act shall be construed to authorize the regulation of (1) compensation paid by an employer to any of his employees, or (2) rates charged by any common carrier or other public utility, or (3) rates charged by any person engaged in the business of selling or underwriting insurance, or (4) rates charged by any person engaged in the business of operating or publishing a newspaper, periodical, or magazine, or operating a radio-broadcasting station, a motion picture or other theater enterprise, or outdoor advertising facilities, or (5) rates charged for any professional service.

(d) The term "defense-rental area" means the District of Columbia, and any area designated by the Administrator as an area where defense activities have resulted or threaten to result in an increase in the rents for housing accommodations inconsistent with the purposes of this Act.

(e) The term "defense-area housing accommodations" means housing accommodations within any defense-rental area.

(f) The term "housing accommodations" means any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes (including houses, apartments, hotels, rooming or boarding house accommodations, and other properties used for living or dwelling purposes) together with all privileges, services, furnishings, furniture, and facilities connected with the use or occupancy of such property.

(g) The term "rent" means the consideration demanded or received in connection with the use or occupancy or the transfer of a lease of any housing accommodations.

(h) The term "person" includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of any of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing: *Provided*, That no punishment provided by this Act shall apply to the United States, or to any such government, political subdivision, or agency.

(i) The term "maximum price", as applied to prices of commodities, means the maximum lawful price for such commodities, and the term "maximum rent" means the maximum lawful rent for the use of defense-area housing accommodations. Maximum prices and maximum rents may be formulated, as the case may be, in terms of prices, rents, margins, commissions, fees, and other charges, and allowances.

(j) The term "documents" includes records, books, accounts, correspondence, memoranda, and other documents, and drafts and copies of any of the foregoing.

(k) The term "district court" means any district court of the United States, and the United States Court for any Territory or other place subject to the jurisdiction of the United States; and the term "circuit courts of appeals" includes the United States Court of Appeals for the District of Columbia.

#### SEPARABILITY

Sec. 303. If any provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other persons or circumstances shall not be affected thereby.

#### APPROPRIATIONS AUTHORIZED

Sec. 304. There are authorized to be appropriated such sums as may be necessary or proper to carry out the provisions and purposes of this Act.

#### APPLICATION OF EXISTING LAW

Sec. 305. No provision of law in force on the date of enactment of this Act shall be construed to authorize any action inconsistent with the provisions and purposes of this Act.

#### SHORT TITLE

Sec. 306. This Act may be cited as the "Emergency Price Control Act of 1942".

Approved, January 30, 1942.

**District Court of the United States  
District of Massachusetts**

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CRIMINAL NO. 16021

THE UNITED STATES

v.

JACOB HARK AND HYMAN YAFFEE, CO-PARTNERS,  
DOING BUSINESS AS LIBERTY BEEF COMPANY

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**OPINION**

[March 5, 1943]

SWEENEY, J. To this indictment the defendants have filed a demurrer, motions to quash, and pleas in abatement. In these pleadings they attack the constitutionality of the Emergency Price Control Act of 1942 as being both an improper use of the war power by Congress, and an improper delegation by Congress of its legislative function to an administrative agency. They also insist that the defendants' rights under the Fourth and Fifth Amendments to the Constitution have been invaded, and further allege that the Government is without authority to prosecute this indictment, because Maximum Price Regulation No. 169, Sections 1364.51 and 1364.52 were revoked prior to the return of this indictment. It is this last contention that gives the court the most concern.

The constitutionality of this Act, as it relates to the ceiling on rents, has been sustained by a three-judge court in *Henderson v. Kimmel*, 47 F. Supp. 635, as a legitimate exercise of the war power of Congress which is broad and "well-nigh limitless" (*United States v. MacIntosh*, 283 U. S. 605, 624). All the reasoning of that decision and the many others sustaining the war power of Congress apply with equal force to the price control features of the Act in question. See *Rubinstein, Inc. v. Charline's Cut Rate, Inc.*, 28 Atl. 2d 113. In the exercise of its very broad power to adopt measures which it deems essential to the war success Congress has intervened in many diverse fields. The Supreme Court has upheld such interferences with property as the taking over and operation of railroads (*Northern Pacific Railway Co. v. North Dakota Ex Rel. Langer*, 250 U. S. 135) and the taking over and operation of telephone and telegraph lines (*Dakota Central Telephone Co. v. South Dakota Ex Rel. Payne*, 250 U. S. 163) and has approved the invasion of the freedom of the individual by compulsory military service both at home and abroad, (*Arver et al. v. United States*, 245 U. S. 366). The power to enact the Emergency Price Control Act of 1942 cannot be seriously questioned in the light of these decisions. Indeed, it would be a strange situation to grant that Congress has the power to take men from their homes and to send them to war, and

to deny that Congress has the right to prevent profiteering by those supplying food to their dependents.

Nor is the exercise of this broad power weakened constitutionally by the delegation of its power under proper standards to those charged with the administration of the Act. Congress has set forth the objectives in Section 1 (a), (50 App. U. S. C. A. § 901 (a)). To attain these objectives maximum price regulations were authorized to be promulgated, the procedure for which is set out in Section 2 (a), (50 App. U. S. C. A. § 902 (a)). There is no loose and general delegation of authority here as in *Panama Refining Co. v. Ryan*, 293 U. S. 388, and *Schechter Corp. v. United States*, 293 U. S. 495. The delegation here is specific and limited by the very terms of the Act.

Congress in the exercise of its legislative function has determined the legislative policy and its formulation as a rule of conduct, by specifying the basic conclusions of fact upon ascertainment of which, from relevant data by a designated administrative agency, it ordains that its statutory command is to be effective. *Opp Cotton Mills v. Administrator*, 312 U. S. 126, 145 (dealing with the Fair Labor Standards Act); see, also, *Sunshine Anthracite Coal Co. v. Adkins*, 310 U. S. 381 (dealing with the Bituminous Coal Act of 1937), and *United States v. Rock Royal Co-op.*, 307 U. S. 533 (dealing with the Agricultural

Marketing Agreement Act of 1937). I therefore conclude that the delegation was not improper, and it follows that the Act is not unconstitutional, either by reason of a want of power in Congress to enact the statute, or by reason of an improper delegation of authority to the administrative officer charged with enforcement of the Act.

The question whether the prosecution of this indictment can be maintained is a very bothersome one. Maximum Price Regulation No. 169 was promulgated effective July 20, 1942. On December 10, 1942, Revised Maximum Price Regulation No. 169 was issued to be effective December 16, 1942. While this purported to be an amendment to the original regulation, it provided that "Sections 1364.51 through 1364.67 are revoked." All counts of the indictment are based on Section 1364.52. The indictment was returned to the District Court on December 21, 1942.

The common law rule was that on the repeal of an act without any reservation of its penalties, all criminal proceedings taken under it fell. *United States v. Reisinger*, 128 U. S. 398. See, also, *United States v. Borke*, 5 F. Supp. 429; *United States v. Gibson*, 5 F. Supp. 153; *United States v. Chambers*, 291 U. S. 217; *Hutchens v. United States*, 68 F. 2d 1006; *Cornierz v. United States*, 69 F. 2d 1002; *Cossiborn v. United States*, 69 F. 2d 1002; *Goldberg v. United States*, 69 F. 2d 1005; *Martino v. United States*, 69 F. 2d 1010; *Miller v.*



*United States*, 69 F. 2d 1011; *Landon v. United States*, 299 F. 75; *Vincent v. United States*, 272 F. 114. The basis of this rule was a presumption that the repeal was intended as a legislative pardon for past acts. 22 C. J. S. § 27 b. (4). To avoid the application of this rule Congress passed 1 U. S. C. A. § 29, which reads as follows:

The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

The effect of this statute is to prescribe a rule of construction different from the common law rule that is binding upon the courts in all cases covered by it, but it refers only to "repeal of any statute," and does not refer to regulations or orders thereunder. Since this prescription is in derogation of the common law rights of persons accused of crime it is to be strictly construed and is limited to the repeal of statutes. The Emergency Price Control Act of 1942 is not self-operative, and the type of crime which is charged in this indictment could not come into existence until regulations had been promulgated by the administrator under legislative authority delegated to him by Congress. In other words, so

far as the price control features of the Act are concerned, the statute needed implementing regulations before a crime could be committed. The findings of fact incidental to, and the promulgation of, implementing regulations are steps in the legislative function. See *Opp Cotton Mills v. Administrator*, supra. Congress has not seen fit to include regulations in the wording of its general saving clause (1 U. S. C. A. § 29), and neither has the Congress or the administrator effected any other saving clause that would be applicable to Maximum Price Regulation No. 169. It would seem that Congress has empowered the administrator to insert a saving clause in any amended regulation for in Section 2 (g) (50 App. U. S. C. A. § 902 (g)) it is provided that:

Regulations, orders, and requirements under this Act may contain such provisions as the Administrator deems necessary to prevent the circumvention or evasion thereof.

And if not contained in this section I think that the authority might be implied generally, but if there is no power in the administrator to add a saving clause in his regulations, then the power rests complete in Congress.

In Section 1 (b) of the Emergency Price Control Act of 1942 (50 App. U. S. C. A. § 901 (b)) Congress has particularly provided a saving clause that will permit prosecutions after the Act has

been terminated either "on June 30, 1944, or upon the date of a proclamation by the President; or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessary in the interest of the national defense and security; whichever date is the earlier," but, again, this saving clause applies to the termination or repeal of the Act in any of the three manners specified. It has no application to the revocation of sections of a regulation.

Inasmuch as this is a criminal matter in which all doubts should be resolved in favor of the accused, and, since I doubt very much that a prosecution can be maintained under this indictment, I think that the question of the Government's right to proceed should be finally determined before entering into a possibly long and expensive trial on the merits. The United States has a right of appeal under 18 U. S. C. A. § 682. I therefore rule that these defendants cannot be held to answer to this indictment, because of the revocation of Section 1364.52 of Maximum Price Regulation No. 169, upon which the counts of the indictment are based, prior to the return of the indictment by the grand jury.

The motion to quash is granted.